

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY
 FILED
 DISTRICT COURT
 DISTRICT OF NEW YORK
 WESTERN DISTRICT OF NEW YORK
 2006 FEB 21 AM 9:38
 D.D.N.Y. BUFFALO

United States District Court		District <u>Western District of New York</u>
Name <u>Adam Bennefield</u>	Prisoner No. <u>00B2792</u>	Case No. <u>2006 FEB 21 AM 9:38</u>
Place of Confinement <u>Wende Correctional Facility, PO Box 1187,</u> <u>Alden, NY 14004-1187</u>		
Name of Petitioner (include name under which convicted) <u>Adam Bennefield</u>		Name of Respondent (authorized person having custody of petitioner) <u>Superintendent Robert Kirkpatrick</u> <u>Wende Correctional Facility</u> <u>Superintendent</u>
The Attorney General of the State of: <u>Eliot L. Spitzer</u>		

PETITION

1. Name and location of court which entered the judgment of conviction under attack Erie County Surpreme Court, The Erie County Building., 25 Delaware Ave., Buffalo, NY 14202
2. Date of judgment of conviction November 17, 2000
3. Length of sentence 2 concurrent 15 year terms + 2-6 years
4. Nature of offense involved (all counts) 2 kidnapping 2nd degree(Penal law §135.20),
Criminal Use of a firearm 1st degree(Penal Law(§265.09[1][b])),
(2nd Ind Escape 1st (PL §205.15))
2 unauthorized use of a motor vehicle in the first degree(penal 165.08),
burglary in the 2nd degree(Penal Law§140.25[2]).Robbery 3rd (PL 160.05).
5. What was your plea? (Check one)

(a) Not guilty	<input type="checkbox"/>
(b) Guilty	<input checked="" type="checkbox"/>
(c) Nolo contendere	<input type="checkbox"/>

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

2 counts of attempted 2nd degree kidnapping; on the other
indictment escape in the 1st degree.
6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury	<input type="checkbox"/>
(b) Judge only	<input type="checkbox"/>
7. Did you testify at the trial?
Yes ☐ No ☐
8. Did you appeal from the judgment of conviction?
Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court Supreme Court, 4th Judicial Department.(b) Result Affirmed the decision.(c) Date of result and citation, if known 306 A.D.2d 906, 761 N.Y.S.2d 904
306 A.D.2d 912, 761 N.Y.S.2d 909(d) Grounds raised Guilty pleas were entered involuntarily; Any purported waiver of appellant's right to appeal invalid, sentence harsh and excessive

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court New York State Court of Appeals(2) Result Affirmed the decision.(3) Date of result and citation, if known 9/18/2003, 100 N.Y.2d 617(4) Grounds raised Guilty pleas were entered involuntarily; Any purported waiver of appellant's right to appeal invalid, sentence harsh and excessive

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court N/A(2) Result N/A(3) Date of result and citation, if known N/A(4) Grounds raised N/A10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Erie County Supreme Court(2) Nature of proceeding 440.10 and 440.20 motion(3) Grounds raised Ineffective Assistance Of Counsel, Involuntary Guilty Plea, Double Jeopardy, Denial of Public Trial

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result Denied with Memorandum and Order

(6) Date of result Dec. 12, 2005

- (b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐ N/A

(5) Result N/A

(6) Date of result N/A

- (c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐ N/A

(2) Second petition, etc. Yes ☐ No ☐ N/A

- (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: The defendant was denied effective assistance of counsel.

Supporting FACTS (state *briefly* without citing cases or law) Defense Counsel failed to provide the defendant with a defense, failed to tell the defendant of all direct consequences of the plea, counsel failed to do an independent investigation into the facts of the case, ^{provide} or any type of defense that was available to the defendant, failed to investigate witnesses and people favorable to the defendant's defenses available, and failed to protect the defendant against double jeopardy.

B. Ground two: Conviction was obtained by plea of guilty that was unlawfully induced and was not knowing, not voluntary and not intelligently made.

Supporting FACTS (state *briefly* without citing cases or law): The court, the people and the defense counsel did not tell the defendant of all the direct consequences of the plea and unlawfully induced the plea, they also forced the defendant to plead guilty by not allowing him to present the defense of his choice which the evidence supported, while also prosecuting the defendant twice with the same charges from the same elements and time, even know that it was unlawful, and also did not abide by the agreement that was made per the plea.

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C. Ground three: Denial of the right to not be prosecuted twice for the same crimes.

Supporting FACTS (state *briefly* without citing cases or law): The defendant was prosecuted twice by the same crimes based on the same docket number. The defendant plead guilty in one court to some charges and subsequently charges based on the same docket number, the defendant was again sentenced to a term of sentence, even as the second time the defendant was sentenced on other charges in satisfaction of all the charges on the indictment, which included the same instances and charges sent. to as before

D. Ground four

The defendant was denied his right to have a trial (have his plea taken in open court) in open court.

Supporting FACTS (state *briefly* without citing cases or law): The court took the defendants plea inside the court chambers, did not allow any of the public to attend and failed to give their reason for this in Open Court nor allow the public to attend or voice opposition in regards to not being able to attend the trial (plea) proceedings.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

N/A still pending

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea Atty: Paul Dell o/c Alan D. Goldstein

(c) At trial _____

Atty: Paul Dell o/c Alan D. Goldstein
 (d) At sentencing _____

Atty. Kristin Preeve, Public Appeals Defender
 (e) On appeal _____

(f) In any post-conviction proceeding N/A _____

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A _____

(b) Give date and length of the above sentence: N/A _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which/he may be entitled in this proceeding.

 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

February 10, 2006
 (date)

 Signature of Petitioner